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Mr. R. G. Colosimo, President
Bradford Transportation System
2-8 North Center Street
Bradford, Pennsylvania

Dear Sir:

I have your letter of February 28, 1952, transmitting a copy of the contract between your company and the Erie Railroad Company dated November 23, 1949 under which the limousine service between Bradford and Salamanca, Pennsylvania, is performed.

From this agreement it appears that the Railroad desired to provide a substituted motor vehicle service for the handling of railroad passengers and baggage between the two points involved. For this purpose the Railroad furnished a limousine and your company agreed to maintain and repair such vehicle and to supply personnel to make five round trips daily on schedules satisfactory to the railroad.

The railroad agreed to obtain all necessary licenses and authority to operate from state and federal regulating bodies, it being expressly stipulated that the transportation of passenger and baggage under the agreement was an obligation of the railroad to be performed by your company as agent for and on behalf of the railroad and that the railroad "shall at all times remain fully responsible . . . under all applicable provisions of the law governing the duties and obligations of a carrier to the public generally." Consistent with this obligation, your company further agreed "to comply with instructions given by the Railroad relating to the manner and method of caring for and handling railroad passengers and their baggage" with the specific understanding that the "Railroad will have the entire supervision, direction and control over the transportation of its passenger traffic under this agreement, including the care of baggage." It is significant in this regard that with respect to employees of your company performing the maintenance and repair service, it is stated that "your company shall be deemed to be an independent contractor, the railroad expressly relinquishing control as to their "employment, discharge, compensation . . . or services rendered."

Thus, under the terms of the agreement, the railroad reserved the right to control the manner of rendition of the service performed

by the drivers of the limousine, and it is therefore my opinion that such drivers, in the performance of the service in question, are employees of the railroad within the meaning of the Railroad Retirement Act. Indeed, this is recognized in the agreement itself which requires your company to maintain accurate records of the time devoted to, and amounts paid for, operating the limousine and to make deductions "in compliance with the Railroad Retirement and Carriers' Taxing Acts," the railroad stating that it "will also comply with its obligation under the Railroad Retirement and Carriers' Taxing Acts as affects the aforesaid personnel."

In accordance with your request, I am returning herewith the agreement between your company and the Erie Railroad dated November 23, 1949.

Very truly yours,

Myles F. Gibbons
General Counsel

Enclosure
Agreement

BD:ah